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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/618,566	07/17/2000	Gary K. Michelson M. D.	101.0056-03000	2024

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CHANTILLY, VA 201511101

EXAMINER

REIP, DAVID OWEN

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/06/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/618,566

Applicant(s)

MICHELSON M. D., GARY K.

Examiner

David O. Reip

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 200-290 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 282-286 is/are allowed.
- 6) ☒ Claim(s) 200-246, 250, 253, 255, 258, 261-277 and 287-290 is/are rejected.
- 7) ☒ Claim(s) 247-249, 251, 252, 254, 256, 257, 259, 260 and 278-286 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 200-240, 242, and 287-290 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 200, line 14, "said bone screws" lack antecedent basis in the claims.

With respect to claims 212 and 213, line 3 of each claim, "said pairs of bone screw receiving holes" lack antecedent basis in the claims.

With respect to claim 217, line 3, "the same tool" lacks antecedent basis in the claims.

With respect to claims 231 and 272, "polygyconate" is unclear -- there is no such material. Examiner assumed "polyglyconate."

With respect to claim 242, lines 1-2, "said recess" lacks antecedent basis in the claims.

With respect to claim 287, lines 1-2, "said first concave curvature" lacks antecedent basis in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 200-202, 206, 208-211, 214-216, 222-225, 241-246, 249, 253, 255, and 261-266 rejected under 35 U.S.C. 102(e) as being anticipated by Errico et al (U.S. Pat. No. 5,520,690). Figs. 3 and 7-9 show a spinal plate system having all the limitations as recited in the above listed claims, including: a plate 200; a plurality of bone screw receiving holes 210 having a reduced diameter lower portion 244, an increased diameter upper portion 215, and threading 211; and a locking element 232 coaxially engagable to the bone screw holes.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 203, 219, 226-236, 250, 258, and 267-277 are rejected under 35 U.S.C. 103(a) as being unpatentable over Errico et al. As previously discussed, Errico et al show a device which is basically the same as that recited in claims 203, 219, 226-236, 250, 258, and 267-277. However, Errico et al does not specifically disclose the claimed radius of curvature of the plate, bone growth promotional substances, or the plate being made of a resorbable material. It would have been obvious to the skilled artisan to build a spinal plate having a complex curvature with radii of curvature corresponding the anatomy of the spine for any selected spinal location. As to bone growth promotional substances and resorbable materials, such limitations are conventional in the art.

Allowable Subject Matter

Claims 282-286 are allowed.

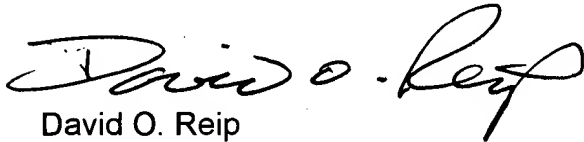
Claims 287-290 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip at (703) 308-3383. The examiner can normally be reached Mon-Thu and every other Fri from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Recla, can be reached at (703) 308-1382. The fax number for this Unit is (703) 308-2708 (unofficial) or (703) 305-3590 (official).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0858.

A handwritten signature in black ink, appearing to read "David O. Reip". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Reip".

David O. Reip
Primary Examiner
November 30, 2001